



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 19, 1996

Mr. Roy Murphy, III
Attorneys at Law
Two Houston Center
909 Fannin, Suite 560
Houston, Texas 77010

OR96-1194

Dear Mr. Murphy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34474.

The Lake Forest Utility District (the "LFUD") received a request for the following information:

1. A copy of all notifications posted regarding public notice of Lake Forest Utility District ("LFUD") Board of Directors elections for 1992, 1994 and 1996, including dates and locations of posting.
2. A copy of all notices posted in any and all local newspapers to include the name of the paper and the date published.
3. A copy of the actual ballot for the 1994 LFUD Board of Directors election.
4. A copy of the election results from the 1994 LFUD Board of Directors election.
5. A copy of any information stating the date, time, place, and hours the 1992 and 1994 election was held.
6. A copy of the Board Meeting minutes for LFUD of all meetings and each statement announcing the names and addresses of the Board Members of LFUD and the service providers and their terms of office for the 1992, 1994 and present Directors of LFUD.

7. A copy of all minutes of any and all Board of Directors' meetings for LFUD beginning November 1, 1991 to date.
8. A copy of all contracts between any outside service provider or company currently being utilized by LFUD that provide any type of service or product to the District.
9. A copy of the financial audits, canceled checks, general journals, billings, quotes, bids, estimates, and records of disbursement of LFUD from November 1, 1991 to date.
10. A copy of all correspondence of LFUD from November 1, 1991 to date.
11. A copy of all documentation for the period of time from November 1, 1991 to date, reflecting LFUD's authority to enter into the construction of that one certain jogging trail at LFUD Park.
12. A copy of any contract, expenditures, billing, canceled checks, terminations, statements, agreements, bid, or directive as to any and all Lake Forest Municipal District Park agreements from November 1, 1991 to date as to modifications, improvements, repairs, maintenance, engineering, fencing, legal, landscaping, security, or other related services.
13. A copy of all sales, invoices, travel vouchers or reimbursements, ledgers, billings, expenditures, transfers, receivables, or disbursements of any funds or agreement to disburse from any Board member(s) to any service or product provider to LFUD from November 1, 1991 to date.
14. A copy of all reports, architectural layouts, engineer's reports or notifications, statements, bids, proposals, disbursements, purchase orders, or other written correspondence referencing the Lake Forest Municipal Utility District Park from November 1, 1991 to present date.

You have submitted representative documents¹ for our review and you contend the requested information is excepted from required public disclosure under sections 552.101, 552.103, 552.107 and section 552.117 of the Government Code.

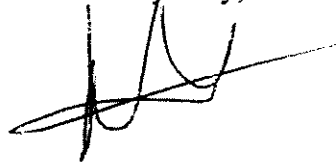
¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation to which the state is or may be a party. LFUD has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. LFUD must meet both prongs of this test for information to be excepted under section 552.103(a).

After reviewing the documents which include the pleadings, we conclude that the documents requested are related to the litigation. Therefore, the LFUD may withhold the documents under section 552.103. We note that when the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). We assume that you have already provided information such as notices of the public meetings and minutes of public meetings to the requestor as contained in Representative Sample No. 1, Representative Sample No. 2, and Representative Sample No. 7.² In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). You may withhold the remaining documents under section 552.103, and so consequently we need not address the remaining exceptions you assert.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros
Assistant Attorney General
Open Records Division

JIM/rho

Ref.: ID# 34474

²Minutes of a meeting of a governmental body are public records when entered, and public access may not be delayed until formal approval is obtained. Open Records Decision 225 (1979). In addition, records specifically public by statute and election return information may not be withheld under section 552.103. See Open Records Decision No. 551 (1990)

Enclosures: Submitted documents

cc: Mr. Richard L. Moore & Associates
225 South Heights Blvd.
Houston, Texas 77007-5897
(w/o enclosures)